Consolidated Packaging Corporation, Flint Division, Debtor-in-Possession *and* Local 421, International Union, Allied Industrial Workers of America, AFL–CIO. Cases 7–CA–34759(1) and 7–CA–34759(2)

November 10, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon charges filed by Local 421, International Union, Allied Industrial Workers of America, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued a consolidated complaint on July 29, 1993, against Consolidated Packaging Corporation, Flint Division, Debtor-in-Possession, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer.

On October 12, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 14, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 18, 1993, notified the Respondent that unless an answer was received by September 2, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Flint, Michigan, has been engaged in the manufacture of packaging products. During the calendar year 1993, the Respondent sold goods valued in excess of $50,000 to General Motors Corporation, an enterprise directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

All employees of the Respondent, excluding office employees, clerical employees, executives, supervisors, guards, sample cutters, sales employees, professional and technical employees and trainees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since at least 1988, the Union has been the designated collective-bargaining representative of the unit employees. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 10, 1993, to January 8, 1995. Based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit employees.

The 1993–1995 contract provides in article XXIV for the payment by the Respondent of the health care benefits/claims of its unit employees. Since about January 7, 1993, the Respondent has failed and refused to pay health care claims. Article XXXI of the 1993–1995 contract requires that the Respondent provide the Union with written quarterly reports demonstrating the Respondent's progress to date on reinvestment of contract savings into the Respondent's Flint facility. Since about January 10, 1993, the Respondent has failed and refused to provide the Union with the quarterly reports on reinvestment. The Respondent engaged in this conduct without the Union's consent and without affording the Union an opportunity to bargain. The terms and conditions of employment involved are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to pay health care claims pursuant to the 1993–1995 contract, we shall order the Respondent to make whole its unit employees by reimbursing them for all health care claims and for any expenses ensuing from

its failure to make such reimbursement, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, we shall order the Respondent to provide the Union with the requested written quarterly reports demonstrating progress on reinvestment of contract savings.

ORDER

The National Labor Relations Board orders that the Respondent, Consolidated Packaging Corporation, Flint Division, Debtor-in-Possession, Flint, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Local 421, International Union, Allied Industrial Workers of America, AFL–CIO as the exclusive bargaining representative of the employees set forth below by failing and refusing to reimburse employees for medical expenses as required in article XXIV of the 1993–1995 contract and failing and refusing to provide the Union with the written quarterly reports demonstrating progress on reinvestment of contract savings pursuant to article XXXI of the 1993–1995 contract:

> All employees of the Respondent, excluding office employees, clerical employees, executives, supervisors, guards, sample cutters, sales employees, professional and technical employees and trainees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to all the terms of the 1993–1995 contract with the Union.

(b) Reimburse unit employees for health care claims, with interest, as provided in the remedy section of this decision.

(c) Provide the Union with the quarterly reports on reinvestment of contract savings.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Flint, Michigan, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 10, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Local 421, International Union, Allied Industrial Workers of America, AFL–CIO as the exclusive representative of our employees set forth below, by failing and refusing to pay our unit employees' health care claims as required by article XXIV of our 1993–1995 contract with the Union and failing and refusing to provide the Union with written quarterly reports demonstrating our progress to date on reinvestment of contract savings as required by article XXXI of the contract:

> All employees, excluding office employees, clerical employees, executives, supervisors, guards, sample cutters, sales employees, professional and technical employees and trainees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to all the terms of the 1993–1995 contract with the Union.

WE WILL reimburse all unit employees for their health care claims and any ensuing expenses, with interest.

WE WILL, on request, provide the Union with the written quarterly reports demonstrating our progress to date on reinvestment of contract savings.

CONSOLIDATED PACKAGING CORPORATION, FLINT DIVISION, DEBTOR-IN-POSSESSION